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United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE and WALLACE D. BRADFORD,
Petitioners and Appellants,
vs.
EARL L. CLARK, Drain Commissioner of Oakland County, Michigan, and
BOARD OF SUPERVISORS OF OAKLAND COUNTY,
Respondents and Appellees,
CITY OF ROYAL OAK, Intervenor

AMPLIFICATION OF APPENDIX TO APPELLANTS' FIRST BRIEF

PAUL W. VOORHIES,
IRVIN LONG,
Attorneys for Appellants,
2046 Penobscot Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., Conn Bldg., 457 Fort St. W., Detroit 26, Mich.

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EXPLANATORY STATEMENT

We wish to avoid violating the court's rule against filing additional briefs after the argument, yet we wish to meet a condition which was apparent at the argument—confusion as to applicable statutes. Some statutes were

quoted in appellees' brief and our reply brief which were not in our appendix, and in some references to these there might be confusion as to where they are found. Sometimes a reference was made to a chapter and section of an original enactment, which might appear to be a reference to a statute not already quoted, because the original quotation might give the section number in a compilation. We therefore believe that an amplification of the original appendix will aid the court if we put in one place all statutory provisions quoted anywhere in the argument sections of the briefs, and add thereto some other sections which might have a bearing upon the issues, or might aid the court in understanding procedure preliminary to levying drainage assessments. Many of these may be quite remote from the issues, but they are included in order to explain other provisions having a more direct bearing.

Let us further explain the section numbering. Both the drain law and general tax law developed from codifications with numbered sections to which there may be cross references confusing in the compilations. We therefore place before each quotation the section number appearing in the original codification and in a note under the quotation we cite the compilation section number and other explanatory matter which may be helpful.

We wish to here answer a question occurring at the argument when something was said as to Act 316 Michigan Public Acts 1923. That act was the codification of the Michigan Drain Law. It has been frequently amended, but so far as this case is concerned the only pertinent amendments are those contained in Act 331 Michigan Public Acts 1927. This explains why we place after a quotation either the date 1923 or 1927, which indicates whether the provision in the form applicable to this case appears in Act 316 of 1923 or Act 331 of 1927.

We divide these quotations between the drain law and general tax law.

DRAIN LAW PROVISIONS

Ch. VI, Sec. 1—"Upon the release of the right of way and damages or upon the determination and return of the special commissioners, the commissioner shall make his final order of determination establishing the drain, which drain shall be divided into convenient sections for the letting of contracts. A certified copy of said order of determination shall be filed with the county drain commissioner within five days after such order is made. He shall before the day of letting and review, apportion the per cent of the cost of construction of such drain which any township, city or village traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway under the control of such township, city or village. He shall apportion the per cent of the cost of construction of such drain which any highway then under the control of the county or district road commissioners shall be liable to pay by reason of benefits therefor, and as the means of improving such highway. He shall also apportion the percent of the cost of construction of such drain which any state trunk line highway, under the control of the state highway commissioner, shall be liable to pay by reason of benefits therefor and as the means of improving said highway. He shall also apportion the per cent of benefits to accrue to any piece or parcel of land by reason of the construction of such drain over and above the per cent apportioned to any township, city or village at large or to any highway as above provided. Such per cent so apportioned when finally approved shall be assessed against such townships, cities and villages and against the county at large

by reason of the improvement of the highways within the drainage district, and against the state by reason of the improvement of the state trunk line highways within such drainage district, and against all parcels of land therein according to such apportionment of benefits as herein provided. The apportionment of benefits so made shall be subject to review and correction and may be appealed from as in this act provided. The board of supervisors at its October meeting each year shall make provision by proper assessment of the amounts apportioned against any highway under the control of the county and district highway commissioners." (1927.)

Note: This is also Sec. 4892 C. L. 1929 and Sec. 11.56 M. S. A. This is quoted merely to show procedure preliminary to levying of original assessment.

Ch. VI, Sec. 4—"The commissioner shall give notice for the holding of a public meeting, at which a review will be had of the apportionment of benefits made as aforesaid and also for the purpose of letting a contract or contracts for the construction of such drain. Notice of such hearing shall be given by publishing a notice thereof, at least two insertions in some newspaper published and of general circulation in the county, if there is one. Such notice shall be so published at least once not less than ten days prior to the hearing. The commissioner shall also give notice of such hearing by posting notices thereof in five conspicuous and public places in each township where the district is located, within the limits of said districts at least ten days prior to such hearing: Provided, That in all cases where the apportionment of benefits shows less than one hundred descriptions upon which benefits have been apportioned, personal service shall be had upon all resident land owners within the drainage district, at least ten days prior

to such hearing or by leaving a copy of said notice at the residence of such property owner with some person of suitable age and discretion. As to all other land owners, notice shall be given by posting and publication as above provided. Such notice shall also be personally served upon any of the county road commission and the supervisor of each township affected, the mayor of each city and the president of each village. Such notice shall contain the names of all counties, cities, townships or villages affected. Such notice shall contain a description of the several tracts or parcels of land constituting the special assessment district of such drain: Provided, That it shall not be necessary to subdivide any tract or parcel beyond the point where the whole thereof is within such drainage district or to describe the said drain further than by reference to it by its name or number, and it shall also state the number and length of sections; the average depth and width of each section; and in case of tile drains, the amount and specifications of all tile required; the location, number, type and size of all culverts and bridges and the conditions upon which said contract or contracts will be awarded; and in no case shall said notice contain the minutes of survey or table of cuttings which shall be kept on file in the office of the drain commissioner and be open to inspection at the time and place of such letting, and that at the time and place of such letting, or at such other time and place thereafter to which the county drain commissioner may adjourn the same, the apportionment of benefits and the lands comprised within the special assessment district shall be subject to review for at least one day; such review shall be held open from nine o'clock in the forenoon until five o'clock in the afternoon. On such reviews the county or district road commission may appear in behalf of the county, the supervisor or commissioner of highways of any township may appear on behalf of such township; the

mayor or some officer of the city designated by him may appear for such city, the president may appear in behalf of such village, and any district or county road commission may appear for such district or county. At such review the county drain commissioner shall hear the proofs and allegations of all parties interested, and shall carefully reconsider and review the description of land comprised within the special assessment district, the several descriptions and apportionment of benefits, and define and equalize the same as may seem just and equitable, and shall fix the number of installments for the collection of drainage taxes. Whenever an apportionment of benefits shall be made against a state trunk line highway, the drain commissioner shall at least twenty days before the review thereon, notify by registered mail the state highway commissioner of the percentage apportioned against such highway and the date and place fixed for the review of all apportionment of benefits. If the state highway commissioner desires to have such apportionment of benefits reviewed by the state commissioner of agriculture, he shall within ten days from the receipt of such notice, file with the drain commissioner an objection to the apportionment. The drain commissioner shall then notify the state commissioner of agriculture of the day and place fixed for such review of apportionments and at such meeting the commissioner of agriculture or some deputy selected by him, shall review the apportionment made against the said state trunk line highway, listen to the proofs and allegations of the parties and may view the highway benefited, and his action and decision thereon, reduced to writing, shall be final." (1927.)

Note: This is also Sec. 4895 C. L. 1929 and Sec. 11.59 M. S. A., but in latter are some changes made in 1931 not believed to be material. Quoted for same reason as preceding section.

Ch. IX, Sec. 3—"Whenever the amount assessed for the construction of any drain shall not be sufficient to complete the same, and to pay all the costs and incidental expenses or to pay the principal and interest on bonds if such are issued, a further assessment shall be made to meet the deficit or additional expense. Such further assessment shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in one year, but there shall be no review of nor appeal from such further assessment."

Note: This is also Sec. 4917 C. L. 1929 and Sec. 11.81 M. S. A., but in each is an amended added by Act 39 P. A. 1931. This is quoted in Appellees' Brief p. 15 and in Reply Brief p. 15.

Ch. X, Sec. 1—"Within ten days after the letting of contracts, or in case of an appeal, then forthwith after such appeal shall have been decided, the commissioner shall make a computation of the entire cost of such drain which shall include (1) all the expense of laying out and designating the drainage district, which item of expense shall include the entire cost of the survey; (2) the expense of locating, establishing and constructing the drain; (3) the fees and expenses of special commissioners; (4) the compensation to be paid the board of review; (5) the cost of construction of bridges and culverts; (6) the contracts for the construction of the drain, or other work to be done on said drain; (7) the estimated cost of an appeal in case the apportionment made by the commissioner shall not be sustained; (8) the expenses of the state commissioner of agriculture, where called; (9) the cost of publishing all notices required; (10) and all fees of the probate judge, and he shall add the whole into a gross sum and add thereto five per cent of said gross sum to cover contingent expenses

and the entire sum so ascertained shall be deemed to be the cost of construction of such drain." (1923.)

Note: This is also Sec. 4923 C. L. 1929 and Sec. 11.87 M. S. A., but in these compilations are some slight changes made by Act 318 P. A. 1929. Quoted to show procedure.

Ch. X, Sec. 2.—"The commissioner shall thereupon make a special assessment roll for such drain for each county, township, city or village and each state trunk line highway affected thereby, which roll shall be designated, '(giving name or number) drain special assessment roll,' and he shall enter therein a correct description of the tracts, parcels or subdivisions of land benefited by such drain and place opposite each description the amount of the per cent heretofore determined upon by him or by the board of review, as the case may be. He shall also enter thereon the amount of the per cent apportioned to each county, township, city or village, and each state trunk line highway, and in case such amount be payable in installments, he shall also enter thereon a memorandum of the installments thereof and of the year or years when such installments shall be spread; and shall add a certificate in writing of the determination whether the taxes assessed for benefits shall be paid in one or more years. Such rolls shall be dated and signed by said commissioner and filed on or before the last Wednesday in September in each year, in the office of the county clerk.

"The commissioner shall prepare a tax assessment roll in each year for the collection of taxes for the current year, and shall certify the same to the county clerk on or before the first day of the annual meeting of the board of supervisors. In each such roll he shall add to the amount to be collected, interest on all unpaid installments to the date of tax collection. To the roll for the last year he shall add

such further amount, if any, as may be necessary together with outstanding uncollected taxes, to pay all outstanding bonds and interest thereon to maturity." (1927.)

Note: This is also Sec. 4924 C. L. 1929 and Sec. 11.88 M. S. A., but in these compilations are some slight changes made by Act 318 P. A. 1929. Quoted previously in part in Reply Brief p. 16.

Ch. X, Sec. 5—"All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as state and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes. Drain taxes, when collected, shall be returned to the county treasurer to be disbursed by him. In all cases where suit is brought against the collector arising out of the collection of any drain tax, the county shall defend such officer in the same manner that he has now the right to be defended in the collection of general taxes. No suit shall be instituted to recover any drain tax or money paid or property sold therefor, or for damages on account thereof, unless brought within thirty days from the time of payment of such money to, or sale of such property by, the collecting officer; and if such tax shall be paid under protest the reasons therefor shall be specified, and the same procedure observed as is or may be required by the general tax law. All taxes levied under the provisions of this act, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid." (1923.)

Note: This appears in Sec. 4927 C. L. 1929 and Sec. 11.91 M. S. A. Quoted previously in Appellees' Brief, p. 2.

Ch. X, Sec. 6—"If the taxes levied for the construction, cleaning out, widening, deepening, straightening or extending of any drain are not collected by the township, city or village treasurer, they shall by him be returned, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect (naming in each case the particular drain), as lands are returned for state, county and township taxes, and such taxes shall follow such lands, the same as all such other taxes, and all the general provisions of law now existing, or that may be hereafter enacted for enforcing the payment of township, county and state taxes, shall apply to such drain taxes, and to the lands returned delinquent therefor, in the same manner and with like effect." (1927.)

Note: This appears in Sec. 4928 C. L. 1929 and Sec. 11.92 M. S. A. Quoted because it completes prior section.

Ch. X, Sec. 10—"Whenever any drain has been located and established, and contracts let for its construction, and the work of construction has been completed, or partly completed, and the commissioner has made his order establishing the drain, his apportionment of benefits and special assessment roll and filed the same in the office of the county drain commissioner, as provided by this act, and such taxes remain a perpetual lien upon the lands assessed, and filed all of said papers in the office of the county drain commissioner, and no person or municipality affected by the proceedings has taken any action by virtue of section eleven of chapter six of this act to test the validity of the proceedings, or to set the same aside, and it shall further appear that the tax has not been spread on the tax roll of the municipalities affected and the lien of said tax still remains against such lands, on the application in writing of any person or corporation who is now or were owners of the land assessed at the time of the apportionment of

benefits by the commissioner or any person or corporation, who were the owners of land at said time and who were assessed therefor, and who sold such land with covenants of warranty, may make an application in writing to the county drain commissioner setting forth such facts and upon the filing of such application, it shall be the duty of the county drain commissioner to make a certified copy of the assessment roll filed in his office by the commissioner and present to and lay it before the board of supervisors at the first October session thereafter of said board and thereupon it shall be the duty of said board at said session to order and direct such taxes spread upon the tax roll of the municipalities affected thereby, according to the said assessment filed as aforesaid, and as appears by such special assessment roll, or certified to said board. The provisions of this section shall also apply to drains laid out and established and wholly or partly constructed under the provisions of all drain laws in force prior to the passage of this act, where such laws have made such drain tax a perpetual lien upon the lands upon which they are assessed." (1927.)

Note: This appears in Sec. 4932 C. L. 1929 and Sec. 11.96 M. S. A. Quoted as having a possible bearing on question as to whether there is a lien before an assessment is made.

Ch. X, Sec. 13—"In case any drain tax heretofore or to be hereafter assessed, shall be set aside except for causes that would deprive the commissioner of jurisdiction to construct the drain, the commissioner may begin proceedings anew at the stage where they shall be correct. In case a drain tax can or may be set aside for error in description or other defects in the commissioner's or township treasurer's roll, the commissioner shall report the same to the board of supervisors at their October session, who shall order the same reassessed upon the proper description.

Such report may be made at any time before the sale of the land for such tax." (1923.)

Note: This appears in Sec. 4935 C. L. 1929 and Sec. 11.99 M. S. A. Quoted to show difference between *reassessment* and *additional assessment.*

Ch. X, Sec. 15—"In cases where the commissioner determines that the taxes assessed for benefits received shall be collected in more than one installment, said commissioner by and with the written approval of the judge of probate and the county treasurer of the county, may borrow money in anticipation of the collection of such installments and may issue as evidence thereof the bonds of the drainage districts as hereinbefore defined. Such obligations shall specify on their face that they are payable out of the installments of drain taxes to be thereafter collected, and the amount thereof shall not exceed the aggregate of the installments levied. Bonds issued hereunder shall be signed by the commissioner on behalf of the drainage district, shall be countersigned by the county clerk and shall be payable in annual installments equal in number to the installment of taxes, shall mature not earlier than March first nor later than June first of the year following the due dates of the respective installments of taxes. The number of installments shall not exceed fifteen and the amount of each installment shall be fixed by the commissioner to correspond as near as may be to his estimate of the amount of taxes actually collectible each year. The commissioner shall prescribe the form of the bond by and with the written approval of the judge of probate and the county treasurer of the county, shall therein pledge the credit of the drainage district, including the lands embraced within such district and the townships, cities, villages, counties and state trunk line highways assessed at large, in the proportion that they are taxed for the benefits received thereby: Provided, That the written consent as above set

forth of any judge of probate or county treasurer shall not be required in proceedings relating to inter-county drains. Such bonds shall be advertised and sold by the drain commissioner after the manner provided for the advertisement and sale of municipal bonds by act number two hundred seventy-three of the laws of nineteen hundred twenty-five and any amendments which may be made thereto governing such advertisement and sale. If any premium is received thereon such premium shall belong to the fund of the drain. The proceeds derived from the sale of such bonds shall be deposited with the county treasurer to the credit of the drain fund. The county treasurer shall safely keep all such bonds until sold as above provided. In case the amount available in the drain fund shall be insufficient to pay the principal or interest of any such bonds heretofore or hereafter issued when they become due the same shall be advanced and paid by the county out of its general funds and reimbursement to said general fund shall be made out of the drain taxes thereafter collected, provided that such advancement by the county shall not cause the total debt of the county to exceed the constitutional limitation thereof." (1927.)

Note: This appears with later amendments in Sec. 4937 C. L. 1929 and Sec. 11.101 M. S. A. Quoted p. 3 Appellees' Brief.

Ch. X, Sec. 16—"In cases where bonds are issued and sold by the commissioner all installments of the drain taxes shall bear interest at the rate of six per cent per annum from the date of the preparation of the assessment roll until due. Such bonds may provide, if the commissioner so determines, for the payment of interest semi-annually. All of said installments and the interest thereon shall, as collected, be paid into the county treasury and there placed to the credit of the fund of the drain to be used solely for the payment of bonds as the same shall mature. All moneys thus collected in anticipation of the maturity of the bonds

shall be deposited by the county treasurer in a bank or banks to be designated by the board of supervisors of such county and the interest received shall belong to the fund: Provided, however, That any bank receiving county drain funds hereunder shall give bond to the county treasurer in an amount not less than the sum so deposited." (1927.)

Note: This appears in Sec. 4938 C. L. 1929 and Sec. 11.102 M. S. A. Quoted because it completes prior section.

Ch. X, Sec. 17—"Any person liable to the payment of special assessments for benefits received from the construction of a drain hereunder may pay the same in full without interest when the first installment is due. Such payment shall be made to the township treasurer who shall give his receipt therefor, and who shall transmit the same to the county treasurer. The latter official shall on receipt of the same give notice to the commissioner who shall make the necessary changes in the rolls covering subsequent installments." (1923.)

Note: This appears in Sec. 4939 C. L. 1929 and 11.103 M. S. A. with slight changes made by Act 318 P. A. 1929. Quoted to show permission to pay original assessment in full, and because subsequent section refers to it.

Ch. X, Sec. 18—"If there is not sufficient money in the fund in a particular drain at the time of the maturity of the bonds last to mature to pay all outstanding bonds with interest, whether such insufficiency is due to the anticipation of installments as provided in the preceding section, or to failure to sell any lands for delinquent taxes, or to any other cause, it shall be the duty of the commissioner to at once levy an additional assessment as hereinbefore provided in such an amount as will make up the deficiency. Any surplus remaining after the payment of the bonds and

interest shall remain in the county treasury and be used for the maintenance of the drain." (1927.)

Note: This appears in Sec. 4940 C. L. 1929 and Sec. 11.104 M. S. A. Quoted R. 42 and p. 4 Appellees' Brief. This section constitutes basis of appellants' claim.

GENERAL TAX LAW PROVISIONS

There seems to be no disagreement as to meaning of provisions quoted in our appendix from pages 30 to 34. Several of the provisions starting with 7.181 on page 34 we give in complete form.

Sec. 127—"Lands delinquent for taxes for any five years, where said lands have been sold and bid off to the state for the taxes of one or more of the said years, and then so held, and no application having been made to pay, purchase or redeem the said lands for said taxes and no action pending to set aside such taxes or to remove the cloud occasioned thereby, shall, within the meaning of this act, be deemed abandoned lands, unless such lands are actually occupied by the person having the record title thereto. Any lands delinquent for taxes for a period of five or more years, and said lands having been sold and bid in by the state and held by the state for the taxes of any of said years, and no application having been made to pay, redeem or purchase the same, and no suit pending to set aside said taxes or remove the cloud from the title occasioned thereby, shall be subject to the provisions of this section. Whenever it shall appear by the records in the auditor general's office that any lands are delinquent for taxes for five years or more and that said lands have been bid off to the state one or more times by reason of such delinquent taxes, and that the time of redemption of such sale or sales has expired and that no

application has been made to pay, to redeem or purchase the same, and it shall appear that no action is pending in the circuit court of the county where said lands are situated to set aside the taxes or remove the cloud on the title occasioned thereby, the title to the state shall be deemed absolute in and to said lands; and it shall be the duty of the auditor general and the director of conservation to cause an examination of such lands to be made as soon as practicable, to ascertain their value and if abandoned. Said lands shall be withdrawn from sale by the auditor general pending such examination and the determination hereinafter referred to. Upon the examiner filing a certificate as to said examination and the occupancy of said premises, and the certificate of the county clerk of the county where said lands are situated, in the office of the auditor general, showing that no suit is pending in said county to set aside any of said taxes or remove the cloud occasioned thereby, the auditor general and the director of conservation shall determine what lands so examined come within the provisions of this section, and record their determination in a book to be kept in the office of the auditor general for that purpose. The finding and determination of the auditor general and the director of conservation shall show:

First, A description of said lands;

Second, The years for which they have been returned delinquent for taxes;

Third, The time or times bid off to the state, and the taxes for which said bid was made;

Fourth, Whether said lands are occupied or abandoned;

Fifth, Whether or not any suit is pending in the county where said lands are situated to set aside the taxes, or any of them, or to remove the cloud occasioned thereby.

The determination of the auditor general and the director of conservation in that regard shall be deemed to be conclusive as to the facts therein stated, unless suit is instituted to vacate the same within six months, as hereinafter provided. Within ninety days after such determination the auditor general shall make a transfer by deed of all lands so determined by the auditor general and said director of conservation to come within the provisions of this section to the state of Michigan as to an individual, as provided in section seventy-two* of this act so far as said section is applicable, and such lands shall be withdrawn from sale pending the execution of such deed. Said deed or deeds shall be delivered to the director of conservation, who, after having said deed or deeds recorded in the register of deeds office of the county where the lands are situated, shall file the same in his office. Upon the execution and delivery of said deed or deeds to the director of conservation, said director shall hold said lands as state lands, subject to the provisions hereinafter contained. And no suit shall be instituted to vacate, set aside or annul the said determination of the said auditor general and the director of conservation made as aforesaid unless instituted within six months after the determination aforesaid. Any person desiring to file a bill or institute a suit to vacate the findings of the auditor general and director of conservation, as provided in this section, shall first pay to the auditor general all delinquent taxes returned to the auditor general on the lands in question, together with all interests, costs and charges, and shall purchase and pay for all bids and titles held by the state to such lands by paying therefor

*Section 72, C. L. 3464, referring to tax deeds, says: "Such deeds shall convey an absolute title to the land sold, and be conclusive evidence of title in fee in the grantee, subject, however, to all taxes assessed and levied on such lands subsequent to the taxes for which the same was bid off."

the amount bid by the state and all interest and legal charges thereon, as provided in section eighty-four of this act. The money so received by the auditor general shall be paid into the general fund of the state and in case the determination of the auditor general and director of conservation should be set aside and held for naught, and the taxes, or any portion thereof, shall be adjudged invalid for any of the reasons set forth in section seventy-six of this act, then in such case the auditor general shall return to the person entitled thereto such taxes, or any portion thereof, as shall be so adjudged invalid for the reasons aforesaid, and in case the title is held valid the money so received shall be divided between the state, county and township pro rata according to the taxes paid, the same as in other cases. Any suit instituted for the purpose of setting aside the determination aforesaid may be commenced in the circuit court of the county of Ingham. It is hereby made the duty of the county clerks of the several counties of this state, on inquiries by the auditor general, to furnish to said auditor general a certificate showing whether or not any such suit is pending in the circuit court of the counties, as above referred to, relating to any lands described and referred to in the inquiry of the auditor general."

Note: This is Sec. 3520 C. L. 1929 and Sec. 7.181 M. S. A. Portion of this quoted page 34 of appendix to first brief.

Sec. 130—"All taxes charged against such lands in the office of the auditor general at the time they are deeded to the state shall be canceled, but no part of such taxes due to the township or county shall be charged to the state, but the state, county and township respectively shall bear the share of loss on such taxes that properly belongs to each, and the auditor general shall make a list of all such lands in each

county on or before the first (1st) day of March in each year and transmit such list to the county treasurer and the county treasurer shall serve, or cause to be served, upon the supervisor of the township in which such lands are located a copy of the list of lands in such township as furnished to said treasurer by the auditor general. Said supervisor shall produce said list to the board of review while in session for the purpose of reviewing the assessment roll. The supervisor shall omit and cancel from his assessment roll all said lands so deeded to the state, as shown by said list, and it shall also be the duty of the board of review, when in session, to compare the assessment roll of the township with the list so furnished by the county treasurer, as aforesaid, and correct all mistakes, and said lands so deeded as aforesaid shall not be liable to any assessment for any purpose until the same are again sold and deeded by the state, and notice of said sale and deeding given to the county treasurer by the commissioner of the state land office, as hereinafter provided."

Note: This is Sec. 3524 C. L. 1929 and Sec. 7.185 M. S. A. Portion quoted page 35 appendix to first brief. Some construction of this language appears in *Case v. City of Saginaw*, 196 Mich. 687.

Sec. 131—"All such lands shall be held by the director of conservation subject to entry as homestead lands unless withheld and reserved in the manner following: The director of conservation and the auditor general, acting jointly, may reserve and withhold from entry under the homestead right such portion of the lands deeded by the auditor general to the state under section one hundred twenty-seven of the act number two hundred six of the public acts of eighteen hundred ninety-three and acts amendatory thereto as, in their opinion, it may not be advantageous to open for homestead. The director of conservation may also,

with the approval of the conservation commission, withhold from entry under the homestead right and sale, such lands as he may determine to be suitable for state forests, state parks, state game refuges, public hunting or recreational grounds. The said director of conservation and auditor general may affix a minimum price upon any such land not so reserved and withheld. All such lands not so withheld from sale shall be offered for sale by said director of conservation at prices to be discretionary with him: PROVIDED, That in the sale of these lands not so reserved and withheld, the same rules and regulations as provided in act number twenty-one of the public acts of eighteen hundred seventy-three, entitled "An act to require the commissioner of the state land office to give public notice of the restoration of reserved and forfeited state lands to market," shall govern, and no bid shall be accepted for less than the minimum price affixed by such director of conservation and the auditor general. The proceeds from any such sale shall be accounted for to the state, county and township in which said lands are situated pro rata according to their several interests therein, arising from the non-payment of taxes thereon as such interest shall appear in the office of the auditor general. If any person shall apply for any lands not withdrawn from sale as provided herein not to exceed in quantity one hundred sixty acres, or if, within the limits of the plat of any city, or village, not to exceed the contiguous lands in any one block, or two contiguous parcels of unplatted land, for any one person so applying, and shall file an affidavit that such person desires such lands for actual settlement, for the purpose of a homestead, the director of conservation shall, if in his judgment, the application is made in good faith, issue a certificate to such person for such land upon the payment of the sum of ten cents per acre, conditioned that such person shall reside upon said lands for the

period of five years and improve the same: PROVIDED, That in case such lands are included in the plat of any city or village, or of any subdivision of or addition to any city or village, the land that may be taken as a homestead by any person shall be contiguous and shall not exceed one block, according to such plat, or two contiguous unplatted parcels, except where such city or village lands have been bid to the state by government description, in which case no person shall receive a certificate for more than one government description, and in the case of any such lands the amount paid therefor shall be the same for any parcel less than one acre as for one acre as provided in this section. At the expiration of such five years such person shall be entitled to make and shall make proof of the fulfillment of such contract within three months in such manner as the said director of conservation may prescribe. And when such proof is made to the satisfaction of said director of conservation such person shall be entitled to a deed of such land from the state, executed by the director of conservation on behalf of the state, which deed shall be in such form as the director of conservation shall determine; the said deed shall be witnessed and acknowledged and shall be entitled to record in the office of the register of deeds in the proper county, in the same manner and with like effect as other deeds are duly witnessed, acknowledged and certified. Such deed shall convey an absolute title to the lands sold, and shall be conclusive evidence of title in fee in the grantee, and it shall be the duty of the state of Michigan to defend and prosecute all suits brought to protect such title, and the state shall pay all costs adjudged against the homesteader. Such homestead lands shall be subject to the same rules and regulations now in force as to other homestead lands not inconsistent with the provisions of this act. Persons who have heretofore taken up homestead lands under this section, having made the first

payment required by this section, and having resided upon and improved the same since they entered thereupon, are hereby relieved from making any further payments to the state: PROVIDED FURTHER, That nothing in this section shall be construed to entitle any person or persons who have heretofore entered such lands to the return of any part of the payments heretofore made by them. And PROVIDED FURTHER, That any person who has purchased and entered into possession of any lands as a homestead, under and by virtue of the provisions of this section, as originally passed, or amended when said lands had been bid off to the state and were held by the state for the taxes of one or more years, and said lands were delinquent for taxes for three or more years, shall, on performing the other conditions of said section, as amended, receive a deed therefor, as herein provided, and shall be deemed to have a good, sufficient fee-simple title to said premises, to all intents and purposes the same as though said lands had been bid off to the state for a consecutive period of more than three years, as originally provided in section one hundred twenty-seven of said act. And in all cases where the lands have been taken as a homestead as set forth in last foregoing proviso, all actions of ejectment or to recover possession of said lands or to set aside the title of such homesteader by any person, firm or corporation claiming the original or government title, shall be commenced within six months after this act shall take effect, and not afterwards. Said person, firm or corporation shall before commencing such proceedings pay to the auditor general all delinquent taxes returned to the auditor general on lands in question, together with all interest, costs and charges, and shall purchase and pay for all bids and titles held by the state to such lands by paying therefor the amount bid by the state and all interest and legal charges thereon, as provided in section eighty-four of this

act. The money so received by the auditor general shall be deposited in the state treasury to the credit of the state, county and township wherein said lands are situated, in proportion to the amount of taxes due to the state, county and township upon said lands; and in case the state's title to the land shall be declared valid, then the taxes and moneys so paid by the person, firm or corporation instituting such suit of ejectment shall be returned upon the order of the auditor general, less the costs of such suit. And it shall be the duty of the state of Michigan to prosecute and defend suits and pay costs as herein provided: PROVIDED FURTHER, That in case written application shall be made to the director of conservation to purchase any description of said lands not so withheld from sale or homestead right by the state it shall then be the duty of the director of conservation to examine and appraise the value of the land so offered to be purchased as aforesaid. The director of conservation shall make a record of said appraisement, in a book to be kept in his office for that purpose. After such examination and appraisement, if there has been no application to homestead said lands, and if the director of conservation with the approval of the conservation commission does not elect to withhold said lands from the homestead right, and sale, as provided herein, it shall be competent and the director of conservation is hereby authorized to sell such description of land to any person so applying for the purchase thereof, but at not less than the appraised valuation, and he shall not be authorized to sell to any one person over two hundred and forty acres of said land. In case of the sale of said lands, the director of conservation shall execute and deliver to the purchaser a deed in such form as he may determine, which shall convey to the purchaser the same interest as is provided for a deed where said lands have been homesteaded as provided in this section.

All moneys received by the director of conservation upon the sale of said lands as provided under the last above proviso shall by him be deposited in the state treasury, to the credit of the state, county and township wherein said lands are situated in proportion to the amount of taxes due to the state, county and township upon the land so sold by the director of conservation at the time of the conveyance to the state of such lands: And PROVIDED FURTHER, That on all lands withdrawn from sale or homestead right as herein provided, there shall be paid by the auditor general, upon a certificate of the director of conservation containing a list of such lands and the location thereof, to the county treasurer of the county in which such lands are located, an amount equal to twenty-five cents an acre upon each acre of land so withdrawn, which sum shall be distributed by the county treasurer as follows: One-fourth of such sum so paid shall be credited to the general fund of the county; one-fourth to the general or contingent fund of the township in which said land is located and one-half to the school district in which said land is located. Said sum or sums so paid by the auditor general, shall be charged by him to the general fund of the state, and when so paid shall constitute a settlement and satisfaction of any and all claims of said county, township and school district for taxes assessed against said lands, and shall discharge and extinguish any and all claims or liens for taxes by such county, township and school district. Upon the payment of such sum or sums as aforesaid, the title in and to such lands shall be absolute in the state of Michigan, as against said county, township and school district."

Note: This is Sec. 3527 C. L. 1929 and Sec. 7.188 M. S. A. Not previously quoted. Deemed necessary because it shows procedure for disposition of lands forfeited to state.

Sec. 133—"Whenever any person has perfected his title to any such lands, and a deed for the same has been issued by the state to such person, the commissioner of state land office shall so notify the county treasurer of the proper county that such lands are again and thereafter taxable as other lands. And they shall thereafter be assessed to such owner or occupant as other lands are assessed for all purposes. The county treasurer shall serve, or cause to be served upon the supervisor of each township in which such lands are located, on or before the fifteenth (15) of April, a copy of the list of lands in his township, so furnished to said county treasurer by the commissioner of the state land office. Said supervisor shall produce said list to the board of review, while in session, for the purpose of reviewing the assessment roll, and all such lands shall be placed upon the assessment roll: Provided, that if any homesteader upon any of the lands so deeded to the state and held for homestead entry shall surrender his certificate to the state for the benefit of any other applicant, and if such new applicant shall be granted a certificate, the said land shall become subject to assessment as real estate after the expiration of five (5) years from date of the original entry."

This is Sec. 3529 C. L. 1929 and Sec. 7.192 M. S. A. Not previously quoted. Should be read in connection with Sec. 130. Specifies taxability of land after it is returned to private ownership.

We do not deem it necessary to enlarge quotations of the 1937 Statutes appearing on pp. 36 to 39 of appendix to our original brief.

PAUL W. VOORHIES,
IRVIN LONG,
Attorneys for Appellants.